



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

Atty Marchini, Joseph; Fashing, Peter; of Baker Manock & Jensen (for Petitioner Carmela DeSantis, daughter and Trust Beneficiary)

Atty Baldwin, Kenneth A.; Thompson, Timothy; Cunningham, Nikole; of McCormick Barstow (for Co-Trustees Antonietta "Rosa" Verni, daughter, and Nicola "Nick" Verni, son)

Atty Phillips, John, of Wild, Carter & Tipton (for Leonard "Dino" Verni, son)

Atty Bohn, Jeffrey D., sole practitioner (for Erlinda M. Verni, surviving spouse)

Petition for Review of Accounts and Acts of Trustees [Prob. C. 16063(a)(5); 17200(b)(5)]

Leonarda DOD: 7/31/2000	<p>CARMELA DeSANTIS, daughter and Trust Beneficiary, is Petitioner.</p> <p>Summary of Petitioner's requests in the Prayer for Relief:</p> <ul style="list-style-type: none"> That each of the Second, Third, and Fourth Accounts Current submitted to Petitioner by the Co-Trustees be disallowed; That the Co-Trustees, and each of them, be ordered to compensate the estate for any loss caused by their acts and omissions; That the Trustees be directed to prepare and file a true and full account of their acts and proceedings within such time as may be allowed by this Court; and That Petitioner be reimbursed attorney's fees and costs. <p>Petitioner states the following in support of the requests for relief:</p> <p>Accounts Provided by the Trustees</p> <ul style="list-style-type: none"> On or about 8/26/2010, the Co-Trustees, Rosa and Nick Verni, filed a <i>First Account Current and Report of Trustees and Petition for its Settlement</i>; On 10/5/2010, Petitioner filed written objections to the <i>First Account Current</i> based on, among other things, the limited scope of the Account, the Trustees' failure to render separate accountings for each Sub-Trust, the failure to provide information pertaining to transactions involving the Trustees, as well as with respect to various farming operations being managed by the Trustees on behalf of the Trust; <p style="text-align: center;">~Please see additional page~</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>This matter will be heard at 10:30 a.m.</p> <ol style="list-style-type: none"> File contains no record of notice sent by Petitioner to any interested parties regarding the instant <i>Petition</i> pursuant Probate Code § 17203. An incomplete <i>Notice of Hearing</i> form is attached to the instant <i>Petition</i>. Court may require proof of 30 days' service by mail of <i>Notice of Hearing</i> with a copy of the <i>Petition for Review of Accounts and Acts of Trustees</i> for: <ul style="list-style-type: none"> Antonietta Rosa Verni (Rosa); Nicola Verni (Nick); Leonard Verni (Dino); Maria Stanziale; Erlinda Verni; and St. Anthony of Padua Church. Need proposed order pursuant to Local Rule 7.1 which provides a proposed order shall be submitted with all pleadings that request relief. <p>~Please see additional page~</p>	
Saverio DOD: 5/25/2009			
Cont. from			
Aff.Sub.Wit.			
✓ Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			X
Aff.Mail			X
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Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order	X		
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			

Petitioner states, continued:

Accounts Provided by the Trustees, continued:

- At Petitioner's request, the Trustees provided Petitioner with a *Second Account Current*, covering the period of 1/1/2010 through 12/31/2010;
- On 7/26/2012, Petitioner filed written *Objections to Second Account Current*, and attached a copy of the *Second Account Current (copy of the Objections to Second Account Current filed by Petitioner on 7/26/2012 attached as Exhibit B)*;
- The *Second Account Current* continued to be deficient in the same respects as noted with respect to the *First Account Current*, among others;
- In spite of Petitioner's repeated objections, the Trustees continue to fail to properly account to Petitioner and other beneficiaries, as required by the terms of the Trust and Probate Code § 16062 et seq., in the *Third Account Current*, covering the period of 1/1/2011 through 12/31/2011, mailed to Petitioner at her request on or about 11/19/2012, and the *Fourth Account Current* covering the period of 1/1/2012 through 12/31/2012, mailed to Petitioner at her request on or about 4/19/2013;
- The manner in which such Accounts are deficient is further described in Petitioner's *Objections to Third Account Current*, attached as *Exhibit C*, and Petitioner's *Objections to Fourth Account Current* attached as *Exhibit D*;
- Article 11, Section 4 of the Trust requires the Trustees to render an accounting upon written request of any beneficiary;
- To date, the Trustees have failed to provide adequate accounts in response to Petitioner's requests pursuant to this provision, thereby necessitating this request that the Court review the Second, Third and Fourth Accounts Current and the acts of the Trustees.

NEEDS/PROBLEMS/COMMENTS, continued:

Note: Petitioner requests the Court **disallow** the accounts in the prayer of the *Petition*; however, based upon the Petitioner's request in the body of the *Petition* that the Court **review** the Second, Third and Fourth Accounts, which has not been granted since that is before the Court for consideration at hearing on 12/6/2013, the subject accounts have not been reviewed; further, the subject accounts have not been filed with the Court by the Co-Trustees, but are merely attached to the instant *Petition* as attachments to Petitioner's previously filed objections. It appears there are Court filing fees for the accountings that have been circumvented for the Second, Third and Fourth Accounts which have not been filed with the Court by the Co-Trustees, and there exists a lack of any statement or reply from the Co-Trustees regarding the content of the accounts attached by the Petitioner.

Atty Widdis, Lawrence A.; Widdis, Laura, of Widdis & Widdis, Glendale (for Petitioner Carol J. Wertheim)

Atty Fanucchi, Edward L., of Quinlan Kershaw & Fanucchi (Court-appointed for Conservatee)

**Petition for Appointment of Probate Conservator of the Person and Estate
(Prob. C. 1820, 1821, 2680-2682)**

Age: 91 years		<p>CAROL J. WERTHEIM, daughter, is Petitioner and requests appointment as Conservator of the Person with medical consent and dementia powers to administer dementia medications; and of the Estate with bond set at \$255,700.00.</p> <p>Estimated Value of the Estate:</p> <table> <tr> <td>Personal property</td> <td>-</td> <td>\$250,000.00</td> </tr> <tr> <td>Annual income</td> <td>-</td> <td>\$ 5,700.00</td> </tr> <tr> <td>Total</td> <td>-</td> <td>\$255,700.00</td> </tr> </table> <p>Capacity Declaration of Jeffrey Mar, Ph.D., filed 6/3/2013 supports request for dementia powers and medical consent powers.</p> <p>Voting Rights NOT Affected</p> <p>Petitioner states the proposed Conservatee is 91 years of age and has atypical dementia with exaggeration of longstanding domineering and controlling personality tendencies that have become inappropriate, and at times, abusive to those around him, particularly his spouse [LAVERNE YOUNGBERG.] Petitioner states the proposed Conservatee has lost much of his cognitive and functional abilities, lacks judgment and is paranoid, and he is unable to provide for his medical care, food, clothing or shelter. Petitioner states proposed Conservatee has been housed in, and needs to continue to reside in, an assisted living caretaking environment.</p> <p>Court Investigator Jo Ann Morris' Report was filed on 6/7/2013.</p> <p align="center">~Please see additional page~</p>	Personal property	-	\$250,000.00	Annual income	-	\$ 5,700.00	Total	-	\$255,700.00	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Continued to 12/10/2013 at 10:00 a.m. in Dept. 303.</p> <p>Court Investigator Advised Rights on 6/5/2013.</p> <p>Continued from 10/25/2013. Please see First Additional Page for contents of <i>Minute Order</i> dated 10/25/2013.</p> <p>Note: If Court grants Conservatorship of the Estate, bond is required pursuant to Probate Code § 2320 and CA Rule of Court 7.207. Court will require confirmation regarding the value of proposed Conservatee's estate for calculation of the bond.</p> <p>Note: If Petition is granted for Conservatorship of the <u>Estate</u>, Court will set status hearings as follows:</p> <ul style="list-style-type: none"> • Friday, January 10, 2014 at 9:00 a.m. in Dept. 303 for filing proof of bond; • Friday, April 11, 2014 at 9:00 a.m. in Dept. 303 for filing of inventory and appraisal; and • Friday, February, 13, 2015 at 9:00 a.m. in Dept. 303 for filing of first account and/or petition for final distribution. <p>Pursuant Local Rule 7.5, if the documents noted above are filed 10 days prior to the dates listed, the hearings will be taken off calendar and no appearance will be required.</p> <p align="center">~Please see additional page~</p>
Personal property	-		\$250,000.00									
Annual income	-		\$ 5,700.00									
Total	-		\$255,700.00									
Cont. from 062013, 072513, 102513												
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<input type="checkbox"/>	Status Rpt	<input type="checkbox"/>										
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<input checked="" type="checkbox"/>	Citation	<input type="checkbox"/>										
<input type="checkbox"/>	FTB Notice	<input type="checkbox"/>										

Reviewed by: LEG
Reviewed on: 12/3/13
Updates:
Recommendation:
File 1 – Youngberg

Minute Order dated 10/25/2013 from the hearing on the Petition for Appointment of Probate Conservator of the Person and Estate appoints Carol Wertheim as Temporary Conservator of the Person, and states in pertinent part:

- Dan Fry was present on 7/25/2013 and he is not present here today;
- Mr. and Mrs. Youngberg were directed to be present today and they are not;
- A representation has been made to the Court that the terms of the mediation agreement have not been adhered to, specifically the installation of the telephone; and
- On 7/25/2013, Mr. Fanucchi was ordered to set up an appointment to have Ellard Youngberg examined, which did not take place until 10/23/2013;
- The Court appoints Carol Wertheim as temporary conservator of the person with limited powers to facilitate visits as deemed appropriate, ensure the installation of the telephone, look into a hearing device, and to take such actions as deemed necessary to facilitate communication with the staff at the facility regarding meals etc.;
- The temporary conservator shall be limited to these powers until further order of the Court;
- This temporary conservatorship does not authorize the execution of documents or any estate planning on behalf of Ellard Youngberg;
- The Court indicates to the parties that it is issuing this temporary conservatorship based on what is believed to be in the best interest of Ellard Youngberg, and based on the voluntary mediation agreement that was not followed;
- The Court orders that the temporary conservatorship expire on 12/6/2013;
- Mr. and Mrs. Youngberg are ordered to be present at the next hearing [on **12/10/2013**].

Notes for background:

- ***Minute Order dated 7/25/2013*** states the Court informs Mr. Gromis and Mr. Fanucchi to update the estate planning documents appropriately. Mr. Fanucchi is ordered to set up an appointment for another examination for Mr. Youngberg. The Court would like Mr. and Mrs. Youngberg present at the next hearing. Parties agree to meet for mediation today at 1:30 p.m.
- ***Minute Order dated 6/20/2013*** states Ms. Widdis and Mr. [Jason] Wertheim are appearing via Courtcall. The Court indicates to the parties that per the investigative report, it appears that a conservatorship is not necessary. The Court directs Mr. Gromis to provide copies of the estate planning and other documents to Mr. Widdis.

Status Report and Request for Continuance of Sixty Days filed by Attorney Fanucchi on 10/17/2013 states:

- At the previous Mediation on 9/20/2013, it was agreed that the proposed Conservatee would be examined by a licensed psychiatrist which the undersigned was to arrange;
- The attorneys for the Petitioner, Carol Wertheim, have agreed to permit the examiner of the proposed Conservatee by **HOWARD B. TERRELL, M.D.**, Board Certified in Psychiatry and Forensic Psychiatry;
- Medical records were ordered on 10/10/2013 for Dr. Terrell to review for preparation of his report following the examination;
- A continuance of the Further Status Hearing [sic] for **60 days** is requested to allow time for the examination, for receipt of medical records, preparation of Dr. Terrell's Report, and subsequent service on the parties, and a further Mediation, if necessary.

~Please see additional page~

Second Supplement to Petition Re: (1) Additional Capacity Declaration; (2) Declaration Re: Conservsation with Grandfather on 9/21/2013; (a) Isolation at meals; (b) Excluded from Family Gatherings; (c) Medium/Long Term Memory Issues; (d) Misunderstanding of Surgical Risks; (e) Signing of Estate Planning Documents; (f) Do Not Resuscitate Order Not Accurate; (g) Specific Mental Ability Findings filed by CAROL WERTHEIM on 10/18/2013 states, in brief sum:

- At the hearing on 7/25/2013, the Court ordered the proposed Conservatee be reexamined by a medical professional and, since Petitioner and her attorney do not know any doctors in the Fresno area, the court-appointed counsel Edward L. Fanucchi was to arrange for the examination;
- At the second medication on 9/20/2013, it was agreed by all those present that the Youngberg family doctor, Dr. Rubio, not be the examiner;
- To date and to the best knowledge of Petitioner and her attorney, **no** additional examination f Mr. Youngberg has been completed [*emphasis in original*];
- Attached as *Exhibit A* is a *Capacity Declaration* completed by **JASON WERTHEIM, M.D., Ph.D.**, who is a licensed physician in the State of Illinois; *Exhibit B* is a declaration by Dr. Wertheim discussing proposed Conservatee's condition in detail; *Exhibit C* is Dr. Wertheim's curriculum vitae;
- Petitioner alleges that the conclusions of her son, Dr. Wertheim, mirror those of **JEFFREY MAR, M.D., Ph.D.**, as stated in the *Capacity Declaration* filed 6/3/2013 by him, and the 6/9/2012 handwritten evaluation of the proposed Conservatee by Dr. Mar attached as *Exhibit D*;
- Attached as *Exhibit E* is an Advanced Health Care Directive purportedly signed by Mr. Younberg on 9/3/2013 and notarized by Attorney David Paul Gromis;
- Attached as *Exhibit F* is a HIPPA Authorization for Release of Protected Health Information, offered, signed and notarized through the law office of Mr. Gromis dated 9/3/2013;
- Petitioner states it at the least an inappropriate time for her father to be signing any estate planning documents or HIPPA release forms while the conservatorship matter is pending, especially because Petitioner doubts preparation of said documents was her father's idea;
- **Therefore, Petitioner asks the Court to prohibit any person from offering Mr. Youngberg estate planning documents until this matter is decided** [*emphasis added*];
- Attached as *Exhibit G* is a copy of the Mediation Agreement signed by court-appointed attorney Edward L. Fanucchi, Dr. Jason Wertheim, Petitioner Carol Wertheim, and Dan Fry, son of Mrs. Youngberg, on 9/20/2013;
- Petitioner requests that the Court review the second agreement listed on page 1 of the Mediation Agreement (*Exhibit G*) which discusses phone service in Mr. Youngberg's room and who is responsible for ordering service – Mr. Fry; to date **no** phone has been installed [*emphasis in original*]; Petitioner states this is further proof of the isolation of Mr. Youngberg by Mrs. Youngberg's family and their unwillingness to comply with voluntary agreements;
- Petitioner requests that the Court review page 3 of the Mediation Agreement (*Exhibit G*) which states the parties agreed on 9/20/13 that through the use of Mrs. Youngberg's cell phone, Mr. Youngberg would be available for phone calls from Petitioner and Dr. Wertheim on the first and third Sunday of the month between 3 and 4 p.m. or as mutually agreed; Attached as *Exhibit H* is an email from Dr. Wertheim stating he couldn't talk to his grandfather on the first Sunday he was supposed to be available through Mrs. Youngberg's cell phone;
- Petitioner states this is further proof of the isolation of Mr. Youngberg and the unwillingness to comply with voluntary agreements.

Petitioner Carol Wertheim asks that the Court approve her petition at this hearing since there is substantial evidence that Mr. Youngberg needs a conservator, that he is being pressured to sign estate planning documents, that he does not understand and therefore cannot agree to surgery, and that he is being isolated from his daughter and grandson.

~Please see additional page~

Status Report and Recommendations of Court-Appointed Counsel filed by Edward L. Fanucchi on 6/19/2013 states:

- He met for almost 3 hours with the proposed Conservatee, his wife Laverne Youngberg, and his daughter, Carol Wertheim, at Sierra View Homes in Reedley, where the elder Youngbergs reside in separate apartments, and they are with each other on a daily basis; he invited the daughter to attend so he could get an understanding of the forces within the family that have caused the filing of this *Petition* by the daughter;
- The interval history within 12 months indicates a mistrust by Mrs. Youngberg of the motives of Ms. Wertheim; Ms. Wertheim has noted estrangement with her father and Mrs. Youngberg, and this has caused Ms. Wertheim to become frustrated by her lack of involvement in the care and life of her father; things have happened on both sides that have caused this lack of good feelings in the relationship;
- Mr. Youngberg and his daughter express love for each other; it is apparent that both father and daughter share the same controlling personalities, and that personality is not meeting with acceptance from Mrs. Youngberg and her son, Daniel Fry, who is playing an ever-increasing role in the financial affairs of the Youngbergs;
- Mr. Youngberg is mentally alert, focuses on subject matter, is oriented to time, place, person, and thing, and does look to his wife for her reassurance on most matters;
- Mr. Youngberg is not aware of the extent of his assets, nor does his wife seem to be so; they were surprised by the list of assets in excess of **\$700,000.00** prepared by their estate planning attorney, David Gromis; they were unaware of the effect of joint tenancy, especially as to any accounts where one of the joint tenants was someone other than the two of them;
- The Youngbergs repeated that on the death of the last of them, they expect their estate to be divided into 4 equal shares, one share to each of the 3 children of Mrs. Youngberg and one share to the only child of Mr. Youngberg;
- There would have been no way for me to have understood the family dynamics without the presence of Mr. Youngberg's daughter, who is a schoolteacher and who presents herself quite well both in dignity and communication;
- **Recommendations:**
 1. A Conservatorship should not be granted to anyone at this point in the state of health of Mr. Youngberg; he apparently has Power of Attorney in favor of Daniel Fry, and that seems to be working well; he has spoken to Attorney Gromis who prepared the estate planning documents which have yet to be executed, and Mr. Gromis may have some hesitation because of a psychological evaluation done by Psychologist Jeffrey Mar, but it appears that Mr. Youngberg is competent in understanding, focusing, and judgment, although he is getting assistance from his wife and her son Daniel Fry, as well as Mr. Gromis;
 2. If a Conservatorship is deemed appropriate, there should be Co-Conservators with Ms. Wertheim being one along with another from Mrs. Youngberg's family; it would be totally inappropriate to grant the *Petition* which would be contrary to the wishes of Petitioner's father and Mrs. Youngberg; it would stir up emotions that would be highly unsettling to the family, and it would not benefit Mr. Youngberg who is being taken care of quite well through residential care and through his wife and his Attorney-in-fact; there is no question that this daughter [Petitioner] can be and should be involved in his life, and, through the meeting yesterday, a door has been opened to allow this to happen.

~Please see additional page~

Supplement to Petition Regarding Co-Conservators as Suggested by Court-Appointed Counsel filed by Petitioner Carol Wertheim on 7/15/2013 states:

- **Court-appointed Attorney's Report:** In the report filed by the court-appointed attorney for the proposed Conservatee, Attorney Edward Fanucchi, it is suggested on page 2 that if a conservatorship is deemed appropriate by the Court that Ms. Wertheim and Daniel Fry be appointed as Co-Conservators of the person and estate;
- **Petitioner Accepts Proposal:** Notice is hereby given that the Petitioner, Carol Wertheim, accepts advice given by Mr. Fanucchi and asks the Court to appoint her and Daniel Fry as Co-Conservators of the person and estate of her father;
- Petitioner is currently in Chicago, Illinois, assisting her son and family move into a new home (attorney signed the supplement on her behalf with her knowledge and approval, dated 7/11/2013.)

Atty Widdis, Lawrence A.; Widdis, Laura, of Widdis & Widdis, Glendale (for Temporary Conservator, Carol J. Wertheim)

Atty Fanucchi, Edward L.; Mahoney, Michael; of Quinlan Kershaw & Fanucchi (Court-appointed for Conservatee)

**Notice of Motion and Motion of Proposed Conservatee, Ellard V. Youngberg, for
Reconsideration of Court's 10-25-13, Order Appointing Conservator; Memorandum of
Points and Authorities; Declaration of Edward L. Fanucchi**

Age: 91 years		<p>CAROL J. WERTHEIM, daughter, Petitioned the Court requesting appointment as Conservator of the Person with medical consent and dementia powers to administer dementia medications; and of the Estate with bond set at \$255,700.00.</p> <p>Minute Order dated 10/25/2013 from the hearing on the Petition for Appointment of Probate Conservator of the Person and Estate appoints Carol Wertheim as Temporary Conservator of the Person, and states in pertinent part:</p> <ul style="list-style-type: none"> • Dan Fry was present on 7/25/2013 and he is not present here today; • Mr. and Mrs. Youngberg were directed to be present today and they are not; • A representation has been made to the Court that the terms of the mediation agreement have not been adhered to, specifically the installation of the telephone; and • On 7/25/2013, Mr. Fanucchi was ordered to set up an appointment to have Ellard Youngberg examined, which did not take place until 10/23/2013; • The Court appoints Carol Wertheim as temporary conservator of the person with limited powers to facilitate visits as deemed appropriate, ensure the installation of the telephone, look into a hearing device, and to take such actions as deemed necessary to facilitate communication with the staff at the facility regarding meals etc.; • The temporary conservator shall be limited to these powers until further order of the Court; • This temporary conservatorship does not authorize the execution of documents or any estate planning on behalf of Ellard Youngberg; • The Court indicates to the parties that it is issuing this temporary conservatorship based on what is believed to be in the best interest of Ellard Youngberg, and based on the voluntary mediation agreement that was not followed; • The Court orders that the temporary conservatorship expire on 12/6/2013; • Mr. and Mrs. Youngberg are ordered to be present at the next hearing [on 12/10/2013]. <p align="center">~Please see additional page~</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued to 12/10/2013.</u></p> <p>Note: Hearing on the <i>Petition for Appointment of Probate Conservator of the Person and Estate</i> is set for 12/10/2013 at 10:00 a.m. in Department 303.</p>
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Aff.Sub.Wit.			
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FTB Notice			
		<p>Reviewed by: LEG</p> <p>Reviewed on: 12/3/13</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 26 – Youngberg</p>	

Motion of Proposed Conservatee, Ellard V. Youngberg, for Reconsideration of Court's 10-25-13, Order Appointing Conservator; Memorandum of Points and Authorities; Declaration of Edward L. Fanucchi filed on 10/30/2013 states:

- Movant Ellard Youngberg moves the Court for an order reconsidering its 10/25/2013 Order Appointing Conservator and issuing a new and different ruling based upon the Court's consideration of the report of **HOWARD B. TERRELL, M.D.**, and on Dr. Terrell's opinions regarding the mental state and need of Ellard Youngberg for appointment of a conservator;
- The *Motion* is made pursuant to Code of Civil Procedure § 1008(a) and on the ground that new or different facts or circumstances exist in that Dr. Terrell's opinion, after examination of Ellard Youngberg, is that it is not necessary or appropriate to appoint a conservator of the person and estate of Ellard Youngberg, and said new or difference facts or circumstances could not have been presented earlier because Dr. Terrell's opinions had not yet been reduced to formal report as of 10/25/2013, and the attorney for Ellard Youngberg, **MICHAEL MAHONEY**, who attended the 10/25/2013 hearing whereat the subject order was made was unaware of Dr. Terrell's opinions at the time of the hearing;
- The *Motion* is based on the *Memorandum of Points and Authorities; Declaration of Edward L. Fanucchi*; the complete files and records of this proceedings, and upon such other and further evidence and argument as may be submitted to the Court prior to or at the hearing on this motion.

Declaration of Edward L. Fanucchi in Support of Motion of Proposed Conservatee, Ellard Youngberg, for Reconsideration of Court's 10/25/2013 Order Appointing Conservator states:

- The relief requested by Mr. Youngberg by way of the instant Motion is that the Court give due consideration to the report of Howard B. Terrell, M.D., the psychiatrist who evaluated Mr. Youngberg, and in particular, Dr. Terrell's professional opinion after examination of Mr. Youngberg that Mr. Youngberg does not require the appointment of a conservator for his person or his estate;
- Dr. Terrell's report and opinion has not yet been reduced to a formal writing by Dr. Terrell and therefore, was not available at the time of the Court's 10/25/2013 Order Appointing Conservator;
- He learned of Dr. Terrell's opinion during a conversation with him after the examination of Mr. Youngberg on 10/23/2013;
- He had a conflict and was unable to attend the 10/25/2013 hearing himself; as he was operating under the belief that the 10/25/2013 proceeding was merely a status hearing, and not a hearing where the relief sought by the Petitioner's petition might be granted, he sent his associate, Michael Mahoney, to the 10/25/2013 hearing, but he did not inform him of Dr. Terrell's opinion concerning Mr. Youngberg's mental state or lack of need for a conservator; therefore, Mr. Mahoney was not able to convey that information to the Court during the 10/25/2013 hearing;
- Mr. Youngberg will suffer prejudicial and irreparable harm if the Court's order of 10/25/2013 appointing Conservator is not reconsidered in light of Dr. Terrell's report and opinions, and is allowed to stand merely upon the evidence presented by the Petitioner, because appointment of a conservator for Mr. Youngberg without consideration of this evidence supporting the existence of Mr. Youngberg's autonomy and ability to make his own decisions will constitute a denial of Mr. Youngberg's right to due process.

~Please see additional page~

Memorandum of Points and Authorities in Support of Motion of Proposed Conservatee, Ellard Youngberg, for Reconsideration of Court's 10/25/2013 Order Appointing Conservator states:

- **Standard of decision:** A party moving for reconsideration must demonstrate the existence of new or different facts, circumstances or law and an explanation of why those new or different matters were not submitted for the Court's consideration earlier; Code of Civil Procedure § 1008(a);
- **Standard for reconsideration is satisfied in this proceeding:** The proposed Conservatee, Ellard Youngberg, has been evaluated by psychiatrist Howard Terrell, M.D., pursuant to the Court's order; Dr. Terrell is of the opinion that Mr. Youngberg does not require the appointment of a conservator for his person or his estate; Dr. Terrell's opinion could not be presented to the Court at the time of its 10/25/2013 Order Appointing Conservator because Dr. Terrell's report had not been reduced to a formal writing and the attorney who appeared at the 10/25/2013 hearing was unaware of Dr. Terrell's opinion; thus the Court's order appointing the Petitioner, Carol Wertheim, as the Conservator for Mr. Youngberg was based upon incomplete evidence and that order should be reconsidered by the Court in light of the opinion of the expert, who per the Court's order, evaluated Mr. Youngberg and arrived at the opinion that Mr. Youngberg does not need a conservator.
- **Conclusion:** The opinion of the expert psychiatrist who examined Mr. Youngberg at the Court's direction is absolutely necessary and vital for the Court to assimilate and take into account when it renders a decision as important and life-changing as whether or not Mr. Youngberg requires a conservator of his person or estate; since that opinion was not in a proper form to be delivered to the Court on 10/25/2013, and was unknown to the attorney who appeared at what he understood to be merely a status hearing, obviously that opinion was not part of the Court's analysis or decision-making process and reconsideration of the Court's 10/25/2013 Order Appointing Conservator, in light of Dr. Terrell's opinion, is appropriate and necessary to ensure that the best interests and due process rights of Mr. Youngberg are protected;

Mr. Youngberg respectfully requests the Court grant the instant Motion and reconsider its 10/25/2013 Order Appointing Conservator in light of Dr. Terrell's report and opinions.

Note: Declaration of Edward Fanucchi in Support of the Application for Order Shortening Time for Service of Notice of Motion, etc.; (which was granted on 11/5/2013 and set the hearing on 11/14/2013), contains the following documents attached that are not incorporated by reference into the instant Motion for Reconsideration, but are nonetheless briefly summarized in these notes to provide the Court with the information to consider with the instant Motion:

- **Copy of Capacity Declaration completed by HOWARD B. TERRELL, M.D. dated 10/30/2013;** indicates proposed Conservatee has the capacity to give informed consent to any form of medical treatment, and does not have dementia.

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Documents attached to *Application for Order Shortening Time*, continued:

- ***Declaration of Donna Friedenber, R.N, Residential Care Director [at Sierra View Homes, Mr. Youngberg's facility], in Support of Motion of Proposed Conservatee for Reconsideration of Court's 10/25/2013 Order Appointing Conservator states:***
 - Mr. Youngberg came to her office noticeably upset and evidencing signs of panic, and told her he needed help and that somebody had to be with him in the room where his daughter had arrived;
 - When Ms. Friedenber arrived in Mr. Youngberg's room, she found Carol Wertheim who promptly told her that she had plugged in a telephone which Dan Fry was supposed to have put in months ago; she told Ms. Wertheim that Dan did buy Mr. Youngberg a telephone for his room, but Mr. Youngberg refused to have it in his room; Mr. Wertheim stated she has a court order that he is to have a telephone, and Ms. Friedenber replied that Mr. Wertheim needed to show her a court order before she can act on it;
 - Mr. Youngberg was up and down nervous and upset during this conversation, and Carol kept telling him to sit down; Ms. Friedenber states she is familiar with the personality and emotional make-up of Mr. Youngberg, and based upon her acquaintance and professional relationship with Mr. Youngberg, she states that the reason Mr. Youngberg is in residential care is because of his physical weakness, not because of mental problems;
 - Ms. Wertheim began talking about a hearing aid, and Ms. Friedenber told her that he was recently examined and hearing aids have been ordered per what Laverne Youngberg told her;
 - Ms. Friedenber decided to notify the state ombudsman because the demands by Ms. Wertheim are in conflict of the desires of Mr. Youngberg, and this is heading toward elder abuse and could lead to a reportable incident by the Home to the Department of Health Care Services;
 - The time spent in the room together was less than two hours, and during the two hours of meeting, Ms. Wertheim kept talking on and on about many things, including that Mr. Fanucchi was not competent to represent her father, and stated she needed a lawyer from the Los Angeles area to get around this "old boys school;"
 - Ms. Friedenber states that Mr. Youngberg has told her on several occasions that his daughter and grandson interrogate him, and he does not like it;
 - Ms. Friedenber states that from her professional experiences and her contacts with Mr. Youngberg, he is a competent person and is not in need of a conservator.

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Documents attached to Application for Order Shortening Time, continued:

- **Declaration of Ms. Ro Linscheid [Admission and Marketing Director at Sierra View Homes, Mr. Youngberg's facility] in Support of Motion of Proposed Conservatee for Reconsideration of Court's 10/25/2013 Order Appointing Conservator states:**
 - She has come to know Mr. Youngberg quite well as to his choices, his wishes, his personality, and his interests;
 - On 10/25/2013 at ~4:30 p.m., Carol Wertheim came to Ms. Linscheid's office and spent ~1 and ½ hour going from one subject to another about her position with regard to the care of her father;
 - Ms. Wertheim stated she needed to be an advocate for her father, and that his wife, Laverne, and stepson, Dan Fry, were "pulling the wool over his eyes;"
 - Ms. Wertheim stated her father needed someone to conserve his money; Ms. Wertheim stated she wanted the conservatorship to do things for her father, and to prevent Laverne and Dan Fry from controlling her father's finances;
 - Ms. Wertheim stated she had purchased him a telephone, and Ms. Wertheim asked Ms. Linscheid to keep it, and she agreed to do so and stated there would be no change in his wishes to not have a telephone in his room unless Sierra View Homes had a written court order that he must have a telephone in his room, even if he chooses not to have one there;
 - Ms. Wertheim kept telling her over and over that everything she is telling her is confidential;
 - Ms. Linscheid did most of the listening, and Ms. Wertheim did most of the talking;
 - Mr. Youngberg has told Ms. Linscheid on several occasions that his daughter and grandson interrogate him, and he does not like it.

Response to Ex Parte Application; Objection to Constantly Changing Hearing Dates; Objection to Lack of Notice to Proposed Conservatee's Spouse and Other Interested Persons filed 11/18/2013 by Attorney LAWRENCE WIDDIS on behalf of CAROL WERTHEIM states:

- Carol Wertheim through her attorneys, Lawrence Widdis and Laura Widdis, comes with the following responses and objections:
 - **Response to Ex Parte Application** – The court-appointed attorney, **EDWARD L. FANUCCHI**, claims that **ELLARD V. YOUNGBERG** will suffer "prejudicial and irreparable" harm to his person and property if the Court signs the temporary conservatorship order and the clerk issues *Letters*; however, Mr. Fanucchi does not cite even one specific concern for his client and no "property" can be accessed under the order for temporary *Letters*;
 - The Court granted Petitioner temporary *Letters of Conservatorship of the Person* [emphasis in original] with a number of restrictions at a noticed hearing and Petitioner has not threatened to do any act, and will not do any act, outside the powers granted by the Court;

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Response to Ex Parte Application; Objection to Constantly Changing Hearing Dates; Objection to Lack of Notice to Proposed Conservatee's Spouse and Other Interested Persons filed 11/18/2013 by Attorney LAWRENCE WIDDIS on behalf of CAROL WERTHEIM, continued:

1. Response to Ex Parte Application, continued:

- At the hearing on 7/25/2013, all [emphasis in original] attorneys, including court-appointed attorney Fanucchi, and the interested persons present agreed to continue the hearing on the conservatorship petition filed by Carol Wertheim to Friday, 10/25/2013; Mr. Fanucchi did not appear on 10/25/2013 but sent a fill-in attorney whose sole apparent mission was to ask for a continuance since Mr. Fanucchi was otherwise "busy;"
- This was not a "status hearing" on 10/25/2013 as Mr. Fanucchi has claimed;
- The clerk has yet to process the temporary *Letters* despite prompt preparation, notice, and mailing to the Court of the *Letters* and Order, nor has the clerk informed Petitioner or her attorneys of any deficiencies with the *Letters* that were submitted;
- Petitioner requests that the Court's ruling be followed;
- Petitioner and her attorneys "played by the rules," received approval of the Court for temporary *Letters*, and not cannot get the *Letters* issued.

2. Multiple Ex Parte Applications / Notices – In response to the rulings of the Court on 10/25/2013, Mr. Fanucchi filed/noticed multiple ex parte applications seeking to reverse the Court's decision on temporary *Letters*; this is unfair to Petitioner;

- Ex Parte hearings should not be used to reverse rulings of the Court made in an attorney's absence because he is otherwise "busy" and after the hearing doesn't like what the Court ruled;
- Petitioner and her attorneys are also "busy" with her high school teaching and their law practice in Southern California, but appeared on 10/25/2013 as agreed and then ordered by the Court;
- Further, the ex parte applications have had FOUR noticed dates [emphasis in original];
- Originally Mr. Fanucchi said it was on 10/31/2013 at 9:00 a.m.; then it moved to 11/12/2013; then it moved to 11/20/2013; an finally it moved to 11/21/2013; an imperative, emergency hearing moved four times is not imperative or an emergency;
- The next "regular" hearing on the conservatorship petition was set for Friday, 12/6/2013, with the agreement of all present at the hearing on 10/25/2013; now Mr. Fanucchi wants the hearing moved to Tuesday, 12/10/2013; this is also unfair to Petitioner who is a high school history teacher and can only "rearrange" her schedule with notice to the school administration; she did get permission for the 12/6/2013 hearing date, but is unsure she can receive permission for 12/10/2013; this is unfair to Petitioner;
- Further, the Court asked Petitioner to facilitate the attendance of her father, the proposed Conservatee; now Petitioner will need to be in Fresno Monday, 12/9/2013 in order to be at her father's residence early in the morning 12/10/2013 to get him transported.

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Response to Ex Parte Application; Objection to Constantly Changing Hearing Dates; Objection to Lack of Notice to Proposed Conservatee's Spouse and Other Interested Persons filed 11/18/2013 by Attorney LAWRENCE WIDDIS on behalf of CAROL WERTHEIM, continued:

- 3. Insufficient Notice** – Reviewing the latest papers from Mr. Fanucchi and specifically the *Ex Parte Application's* Proof of Service and the *Notice of Continued Hearing's* Proof of Service, both dated 11/14/2013 (copies attached), notice was not given [emphasis in original] to the spouse of the proposed Conservatee, **LaVERNE YOUNGBERG**, or to the relatives named in the conservatorship petitions such as **JASON WERTHEIM, SAMUEL WERTHEIM, JEANETTE ANTHONY**, and **ILA NELSON**, as Petitioner believes is required under Probate Code § 1822; the notices given by Mr. Fanucchi are deficient.
- 4. Hearing Dates & Conclusion** – The Petitioner respectfully requests that the ex parte application be denied for lack of sufficient notice and lack of urgency and immediate harm; Further, Petitioner requests that the continued hearing of Friday, 12/6/2013 be honored as agreed by all those present at the 10/25/2013 hearing, including the stand-in for Mr. Fanucchi; notice was given to all attorneys and interested parties of the 12/6/2013 hearing date by Petitioner's attorney; in advancing or attempting to advance this hearing to 12/10/2013, insufficient [emphasis in original] notice to all interested persons has been given.

Note: *Proof of Service By Mail* attached to Carol Wertheim's response and objection filed 11/18/2013 indicates a "Supplement to Petition Re: Additional Capacity Declaration, etc." was served by mail to all interested persons on 11/15/2013, rather than the response and objection.